INTERNATIONAL COPYRIGHT RELATIONS OF THE UNITED STATES

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The Act to define and regulate trading with the enemy[1] excepts copyrights from the inhibition of the general law of trading with the enemy as well as from the Act itself, subject to the right of any citizen of the United States or corporation organized under its laws to obtain during the existence of the war a license to use any copyrighted matter owned or controlled by an enemy or ally of an enemy, on such conditions as the President may prescribe. The Act moreover expressly permits an enemy or ally of an enemy to file in the United States an application for registration of copyright under the provisions of existing law and gives him a maximum extension of fifteen months after the war if necessary to complete the transaction by deposit of the necessary copies or otherwise, provided, however, that the nation of the enemy applicant shall grant substantially similar privileges to citizens and corporations of the United States.[2] That such reciprocal treatment will be accorded as a matter of course seems highly probable, as from the beginning there has been manifested in all the belligerent countries a strong disposition to respect all international copyright relations.[3]

These relations have been established in various ways, as by treaty, convention, or statute defining the conditions and the manner in which the offer and acceptance of reciprocity may be made. Our Copyright Act of March 4, 1909,[4] provides for exchange of the copyright privilege when the foreign nation either (1) grants by treaty, agreement, or law substantially similar protection to citizens of the United States, or (2) is a party to an international copyright agreement to which the United States may at its pleasure become a party.[5] The President is authorized to determine and proclaim from time to time the existence of such reciprocal conditions, and thus far proclamations have been issued in favor of the following thirty countries and their possessions: Austria, Belgium, Chile, China, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, France, Germany, Great Britain, Guatemala, Honduras, Hungary, Italy, Japan, Korea, Luxemburg, Mexico, The

[1] H. R. 4960, approved Oct. 6, 1917.
[2] Sec. 10, subsec. a, c.
[3] See *Le Droit d'Auteur*, June 15, 1917, 68.
[4] 35 Stat. at L. 1075-1078.
[5] *Ibid.* sec. 8, b.

Netherlands, Nicaragua, Norway, Panama, Portugal, Salvador, Spain, Sweden, Switzerland and Tunis.

All these countries except the Latin-American Republics come within the first category (Germany, Hungary, China and Japan through treaty, the others through diplomatic negotiation). Protection is obtained upon compliance with the domestic law and regulations in force in the country where it is desired. It is to be noted, however, that the United States has the advantage here, for though not a member of the International Copyright Union established under the Berne Convention, the United States nevertheless enjoys the substantial benefit of it by virtue of these reciprocal agreements with practically all the various countries of the union, and American authors and publishers have merely to comply with the provision whereby through first or simultaneous publication in one country party to the union they automatically obtain copyright in all the others.

Under the new British Copyright Act of 1911[6] citizens of the United States may, as before, obtain copyright by publishing their works in the United Kingdom (or such other parts of the empire to which the Act extends) first or simultaneously.[7] Following diplomatic negotiations an Order in Council was issued (effective since January 1, 1915) extending protection also to the unpublished literary, dramatic, musical and artistic works of citizens of the United States, "subject to the accomplishment of the conditions and formalities prescribed by the law of the United States." The Order expressly excepts from its operation Australia, Canada, Newfoundland, New Zealand, and the Union of South Africa.

Of these five "self-governing dominions over seas" Canada alone has not adopted the new British Copyright Act. At a special copyright conference in London in 1910 the Canadian delegate, Mr. Sydney Fisher, took the position that Canada was under peculiar circumstances owing to the proximity of the United States and to the fact that the literature of the two countries is similar, and that in consequence it was necessary to be a little more careful in regard to the provisions of copyright in Canada than any other country. He urged that it was not a wise policy for Canada to give copyright privileges where the other side did not give those privileges on equal terms, which the United States did not on account of the so-called "manufacturing clause" requiring typesetting and printing of English books in the United States; and that as regards the International Copyright Union the only acceptable basis for Canada's adhering to it, as long as the United States remained out of the union or did not give equivalent

[6] 1 & 2 Geo. V, ch. 46.

[7] The British Act provides that

"a work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed *fourteen* days." (Sec. 35, 3.)

privileges, would be with a reservation that the copyright privilege in Canada should only go to the countries of the union with respect to their own citizens or subjects.[8]

No new copyright legislation has yet been enacted in Canada, but the Minister of Agriculture has the whole matter under consideration and a comprehensive measure may be expected presently.[9] Meanwhile the Imperial Copyright Act of 1842 and the Act of 1886, passed in order to give effect throughout the empire to the Berne Convention, remain in force in Canada as well as the old domestic Act of 1875. The Canadian authorities have never regarded the international arrangement between the United States and Great Britain as a "copyright treaty" within the meaning of the clause in the Canadian Act which grants the copyright privilege to "the citizens of any country having a *copyright treaty* with the United Kingdom," and therefore American citizens have not been accorded the right to take direct action under that section of the Act but must proceed under another provision and first obtain copyright in the United Kingdom by publishing there first or simultaneously,[10] whereupon they may then take action also under the domestic Act if this privilege should appear to present any additional advantages.

On the other hand, our copyright relations with the Latin-American Republics of Ecuador, Guatemala, Honduras, Nicaragua, Panama, and Santo Domingo come under the second category, being now founded on the Fourth Pan-American Convention signed at Buenos Aires in 1910 and proclaimed by the United States on July 13, 1914.[11] It is understood also that the governments of Bolivia, Brazil, Costa Rica, and Salvador have announced through diplomatic channels their adhesion to it. This convention affords an example of almost pure reciprocity and is the first of the kind in our copyright annals. It provides in Article 3 that:

"The acknowledgment of a copyright obtained in one State, in conformity with its laws, shall produce its effects of full right, in all the other States, without the necessity of complying with any other formality, provided always there shall appear in the work a statement that indicates the reservation of the property right."

As the institution and extension of copyright agreements is proverbially difficult and slow compared with legislation on matters which command the popular attention, it would seem that prompt advantage should be taken of the present favorable time to urge the other Latin-

[8] H. C. Debates, Can. Sess. 1910-11, Vol. IV, 7807, Vol. V, 8895.

[9] See remarks of the Premier, H. C. Debates, Can. Sess. 1915, Vol. I, 203.

[10] The fourteen days' grace is peculiar to the Act of 1911 and is not operative in Canada; in order to be "simultaneous" the publication must take place on the *same day* under interpretation of the Act of 1842.

[11] 38 Stat. at L. pt. 2, 1785.

American states to ratify and proclaim this convention, and also to take proper steps looking to similar reciprocal protection in the matter of mechanical musical reproduction which presumably would require a special treaty or agreement. The result would be a uniform agreement between some twenty-one American countries to acknowledge and protect the right of literary, musical and artistic property on the sole condition of complying with the copyright law of the country of first publication in America (including on the work itself a notice of copyright reservation).

This is substantially the basis of the copyright union existing between the countries of Europe under the Berne Convention, by the express terms of which any author, though outside the jurisdiction of any one of the union countries, who publishes his work "for the first time" in one of these countries[12] shall enjoy in that country the same rights as native authors, and in the other countries of the union the rights accorded by the convention. Under the revised text of 1908 these now include also

"the exclusive right to authorize the adaptation of musical works to instruments serving to reproduce them mechanically, and the public performance of the same works by means of these instruments,"

subject, however, to the limitations and conditions to be determined by the domestic legislation of each country in its own case. No protection is extended to the unpublished works of alien authors wherever they may reside at the time of making their works.

As stated above, the United States is in the anomalous position of enjoying the privileges of this union and yet not being a member of it because of unwillingness to meet the necessary conditions, namely, the abolition of the legal and technical formalities of notice, registration, and (in the case of English books) typesetting, printing and binding within the United States. But an important modification of the convention has now been made which may have serious consequences for this country. It will be recalled that the United States Copyright Act of 1909, while taking a long step forward in renouncing the "manufacturing clause" in favor of works in a foreign language, retained it for works in the English tongue and allowed a maximum of only sixty days' grace for reprinting in the United States. Protection in Great Britain, on the other hand, is given to authors of the United States without their having to observe any formality, it

[12] The following eighteen countries and their possessions are reported in *Le Droit d'Auteur* as members of the union on January 1, 1917: Belgium, Denmark, France, Germany, Great Britain, Haiti, Italy, Japan, Liberia, Luxemburg, Monaco, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and Tunis. Thus the three nations of first rank not yet members are the United States, Russia, and Austria-Hungary.

being sufficient merely to publish their works there or in another union country. This inequality of treatment was made the basis of formal complaint on the part of Great Britain before the contracting countries of the union, and according to its official organ (*Le Droit d'Auteur,* June 15, 1914) it became necessary either to give up counting upon the British Empire as a member of the union, or to find some acceptable solution of the difficulty. As there was no desire to disrupt the union merely because of a question of the treatment of strangers to it (*e. g.,* the United States) the contracting countries on March 20, 1914, gave their unanimous assent to the solution elaborated and proposed by Great Britain herself in the form of a protocol to the convention[13] framed in general terms to permit any one of them, or any of their transmarine possessions, to restrict the protection of works by authors who, not actually domiciled in the union, belong to a non-union country which does not protect "in a sufficient manner" the works of authors within the jurisdiction of a country of the union.

The protocol provided that it should be ratified within a year from its date and come into effect one month after the expiration of this period, and that the countries ratifying it must then file with the Swiss government a written declaration indicating the countries against which the protection is to be restricted and what the restrictions are. So far as officially announced the following nine countries ratified it: Denmark, France, Great Britain, Japan, Luxemburg, Monaco, The Netherlands, Spain, and Switzerland. At this juncture the war broke out and further action was suspended, but sooner or later the matter is bound to be revived and it would seem that unless steps shall be meanwhile taken on our part looking to the removal of at least some of the grounds of complaint, American authors and publishers may ultimately find their protection in foreign markets somewhat restricted if not practically nullified.

[13] French and English texts are printed in Copyright Office Information Circular No. 4.